

PATENT COOPERATION TREATY

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From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To:
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Reviewed:

Date: _____

Initial: _____

PCT

WRITTEN OPINION

(PCT Rule 66)

Date of Mailing
(day/month/year)

14 AUG 2003

Applicant's or agent's file reference: Reference to Janice

REPLY DUE

within 2 months/days from
the above date of mailing

4510-6-PCT

International application No.

International filing date (day/month/year)

Priority date (day/month/year)

PCT/US02/31201

30 September 2002 (30.09.2002)

28 September 2001 (28.09.2001)

International Patent Classification (IPC) or both national classification and IPC

IPC(7): A61B 17/70 and US Cl.: 606/61

Applicant

RITLAND, STEPHEN

1. This written opinion is the first (first, etc.) drawn by this International Preliminary Examining Authority.
2. This opinion contains indications relating to the following items:

- I ☒ Basis of the opinion
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Rule 66.2 (a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

3. The applicant is hereby invited to reply to this opinion.

When? See the time limit indicated above. ~~The applicant may, before the expiration of that time limit, request this Authority to grant an extension. See rule 66.2(d).~~

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also For an additional opportunity to submit amendments, see Rule 66.4.
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 *bis*.
For an informal communication with the examiner, see Rule 66.6

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.

4. The final date by which the international preliminary examination report must be established according to Rule 69.2 is: 28 January 2004 (28.01.2004)

Name and mailing address of the IPEA/US

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Form PCT/IPEA/408 (cover sheet)(July 1998)

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WRITTEN OPINION

International application No.

PCT/US02/31201

I. Basis of the opinion

1. With regard to the elements of the international application:*

- ☒ the international application as originally filed
- ☒ the description:
 pages 1-37, as originally filed
 pages NONE, filed with the demand
 pages NONE, filed with the letter of _____
- ☒ the claims:
 pages 38-49, as originally filed
 pages NONE, as amended (together with any statement) under Article 19
 pages NONE, filed with the demand
 pages NONE, filed with the letter of _____
- ☒ the drawings:
 pages 1-17, as originally filed
 pages NONE, filed with the demand
 pages NONE, filed with the letter of _____
- ☐ the sequence listing part of the description:
 pages NONE, as originally filed
 pages NONE, filed with the demand
 pages NONE, filed with the letter of _____

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language _____ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the written opinion was drawn on the basis of the sequence listing:

- ☐ contained in the international application in printed form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages NONE
- ☐ the claims, Nos. NONE
- ☐ the drawings, sheets/fig NONE

5. ☐ This opinion has been drawn as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed."

WRITTEN OPINION

International application No.
PCT/US02/31201

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. STATEMENT

Novelty (N)	Claims <u>Please See Continuation Sheet</u>	YES
	Claims <u>Please See Continuation Sheet</u>	NO
Inventive Step (IS)	Claims <u>Please See Continuation Sheet</u>	YES
	Claims <u>Please See Continuation Sheet</u>	NO
Industrial Applicability (IA)	Claims <u>Please See Continuation Sheet</u>	YES
	Claims <u>Please See Continuation Sheet</u>	NO

2. CITATIONS AND EXPLANATIONS

Claims 1, 2, 4-9, and 12 lack novelty under PCT Article 33(2) as being anticipated by Taylor et al (U.S. Pat. No. 6,267,765). Figs. 1-4 and 10-12 of Taylor et al show a surgical implant assembly having all the limitations as recited in claims 1, 2, 4-9 and 12, including: an attachment device 5 with a second end 57 having a hollow core bordered by curved walls and an "entry channel" 12; a tension link 7; a "rod" 3 having a preformed socket that is partially spherical in shape; and a tension link nut 8.

Claims 13, 15, 16, and 18 lack novelty under PCT Article 33(2) as being anticipated by Allard (U.S. Pat. No. 5,484,440). Figs. 3-9 of Allard show a tool for inserting a pedicle screw having all the limitations as recited in claims 13, 15, 16, and 18, including: a receptacle 54 for mating with the enlarged area of the pedicle screw 38; a projection 44; and a handle 14.

Claims 30, 31, 35, 37, 40-42, and 44 lack novelty under PCT Article 33(2) as being anticipated by Korotko et al (U.S. Pat. No. 5,312,405). Figs. 1-2 of Korotko et al show a bone stabilization device having all the limitations as recited in claims 30-31, 35, 37, 40-42, and 44, including: a first rod member 40; a first interconnection mechanism 10 for attaching the first rod member to the first attachment device 44; a second rod member 40 including a compression zone (the clamping portion clamped by screw 42); and a second interconnection mechanism 10.

Claims 3, 10, 11, 14, 17, 19-29, 32-34, 36, 38, 39, 43, and 45-84 meet the criteria set out in PCT Article 33(2)-(3), because the prior art does not teach or fairly suggest devices, tools, and methods having all the limitations as recited in claims 3, 10, 11, 14, 17, 19-29, 32-34, 36, 38, 39, 43, and 45-84. For example, with respect to claim 3, the prior art fails to disclose or suggest a surgical implant assembly having all the limitations as recited in claim 3, including wherein the second end of the attachment device comprises at least one expansion slot operatively associated with the hollow core.

Claims 1-84 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.

____ NEW CITATIONS _____

NONE

WRITTEN OPINION

International application No.
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Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

TIME LIMIT:

The time limit set for response to a Written Opinion may not be extended. 37 CFR 1.484(d). Any response received after the expiration of the time limit set in the Written Opinion will not be considered in preparing the International Preliminary Examination Report.

V.1. Reasoned Statements:

The opinion as to Novelty was positive (Yes) with respect to claims 3, 10, 11, 14, 17, 19-29, 32-34, 36, 38, 39, 43, 45-84

The opinion as to Novelty was negative (No) with respect to claims 1, 2, 4-9, 12, 13, 15, 16, 18, 30, 31, 35, 37, 40-42, 44

The opinion as to Inventive Step was positive (Yes) with respect to claims 3, 10, 11, 14, 17, 19-29, 32-34, 36, 38, 39, 43, 45-84

The opinion as to Inventive Step was negative (NO) with respect to claims 1, 2, 4-9, 12, 13, 15, 16, 18, 30, 31, 35, 37, 40-42, 44

The opinion as to Industrial Applicability was positive (YES) with respect to claims 1-84

The opinion as to Industrial Applicability was negative (NO) with respect to claims NONE